IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 42 of 1999
Date of decision 20. 9 .2007

Deputy Commissioner of Income Tax, Special Range, Amritsar
.. Appellant

Versus

M/s Embrocia Farms Pvt. Ltd. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Sanjiv Bansal, Advocate for the appellant

M.M.Kumar, J.

The revenue has approached this Court under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') challenging the view taken by the Income Tax Appellate Tribunal, Amritsar Bench , Amritsar in its order dated 11.11.1998 passed in ITA No. 1181 (ASR) of 1992 in respect of assessment year 1990-91. The revenue has claimed that following substantial question of law would arise for determination of this Court:

> " Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee which is running a poultry farm is entitled to deductions under Sections 80 HH and 80 I of the Income Tax Act, 1961?"

Brief facts of the case are that the assessee- respondent is a private limited company and is running a poultry farm. It had filed a return on 12.12.1990 declaring loss of Rs. 13,08,510/-. Alongwith the return, a statement was filed by the assessee claiming deductions under Sections 80 HH and 80 I of the Act at Rs. 40,738/- and Rs. 48,885/- respectively. The Assessing Officer disallowed the claim of the assessee made under Section 80 HH of the Act at Rs. 40,738/- holding that the business activities of the

assessee- respondent could not be considered as that of industrial undertaking which was the view taken in respect of assessment year 1984-85. Likewise, the claim of the assessee under Section 80 I of the Act at Rs. 48,885/- was also not accepted. The assessment was completed under Section 143(3) of the Act on 20.11.1991.

On appeal filed by the assessee, the CIT(A), Jammu vide its order dated 20.8.1992 held that the assessee- respondent was an industrial unit and therefore was entitled for deductions under Section 80 HH and 80 I of the Act. Accordingly a direction was issued to the Assessing Officer to calculate the amount of such deduction as per law after giving an opportunity of hearing to the assessee. On further appeal, the Revenue challenged the order before the Tribunal. The Tribunal vide order dated 11.11.1998 dismissed the appeal and placed reliance on its decision in ITA 207 (ASR) 1998 dated 4.11.1993 for the assessment year 1984-85. It is pertinent to mention that the assessee- respondent is running a poultry farm and has been allowed specific deductions under Section 80 JJ of the Act.

After hearing learned counsel we are of the view that this appeal deserves to be accepted as the matter is covered in its favour. Hon'ble the Supreme Court in the case of CIT v. Venkateswara Hatcheries (P)Ltd., (1999) 237 ITR 174 has come to the conclusion that poultry farm would not be covered by the expression 'industrial undertaking' as the chicks are the natural and biological process . The observations of their Lordships in Venkateswara Hatcheries's case (supra) reads as under:

> " ... The formation of chicks is a natural and biological process over which the assessee has no hand or control. Infact what the assessee is doing is to help the natural or biological process of giving birth to chicks. The chicks otherwise can also be

> produced by conventional or natural method and in that process also, the same time is taken when the chicks come out from the eggs. What the assessee by application of mechanical process does in the hatchery is to preserve and protect the eggs at a particular temperature. But the coming out of chicks from the eggs is an event of nature. The only difference seems to be that, by application of mechanical methods, the mortality rate of chicks is less and the assessee may get chicks more in number. This, however, would not mean that the assessee produces chicks and that chicks are 'articles or things'. We are, therefore, of the opinion that the assessee is neither an industrial undertaking nor does the business of hatchery carried out by the assessee fall within the meaning of Section 32 A and Section 80 J of the Act."

Hon'ble the Supreme Court also considered another argument of the assessee that poultry farm would be covered with the words "articles or things" and held that such an assessee could not be regarded as engaged in the business of producing 'articles or things'. Therefore, it would not be entitled to investment allowance under Section 32 A of the Act and deductions under Sections 80 HH, 80 HHA, 80 I and 80 J of the Act. If the facts of the present case are examined in the light of the views expressed in Venkateswara Hatcheries' case (supra) then the substantial question raised has to be answered in favour of the revenue and against the assessee. Accordingly the question is answered in favour of the revenue and against the assessee. Consequently the appeal is allowed and order of the Tribunal

is set aside.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

20.9.2007
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